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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

JOHN CAMERON,

Defendant and Appellant.

D052444

(Super. Ct. No. SCE271917)

APPEAL from a judgment of the Superior Court of San Diego County, Laura W. Halgren, Judge. Affirmed.

A jury found John Cameron (Cameron) guilty of making a criminal threat (Pen. Code, § 422).<sup>1</sup> In a bifurcated hearing, Cameron waived his right to a trial on a strike

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<sup>1</sup> All further statutory references are to the Penal Code.

The jury found Cameron not guilty of attempting to dissuade a witness (§ 136.1, subd. (a)(2)).

allegation and admitted the strike. The court dismissed the strike and placed him on three years' probation. Cameron appeals, contending there was insufficient evidence that his statements "convey[ed] . . . a gravity of purpose and an immediate prospect of execution of the threat" and caused the victim "reasonably to be in sustained fear for his . . . own safety." (§ 422.) We affirm.

## BACKGROUND

Viewing the evidence in the light most favorable to the judgment (*People v. Gaut* (2002) 95 Cal.App.4th 1425, 1427), the following occurred.

Finis Thell Fowler lived in Potrero, across the street about 250 or 280 feet away from the home of Cameron and his brother Robert (Robert Cameron). Fowler's three-acre property was not entirely fenced and the Camerons' property was surrounded by a fence about five to six feet high. Fowler had known Cameron for about 10 years and had a positive relationship with both brothers. Fowler thought Cameron was "a nice guy" when he was sober, but he was often drunk.

Around 10:30 a.m. on March 14, 2007, Fowler was working outside. He heard arguing and profanity at the Cameron home, then two gunshots. Fowler called 911. While he was still on the telephone, he saw Robert Cameron get in his truck and drive away. Deputy Sheriff Ruben Gomez responded to Fowler's call and arrested Robert Cameron. Gomez found Cameron to be highly intoxicated and did not arrest him.

Robert Cameron was in custody pending his June 2007 trial, at which Fowler was subpoenaed to testify. Around 6 p.m. on June 5, a few days before the trial, Gordon Hammers was on the road by Fowler's house, waiting for Fowler to return home and give

him a ride to a meeting. Hammers heard what sounded like an intoxicated person vocalizing or having an altercation with a family member.

After the meeting, Fowler and Hammers returned to Fowler's home around 9 p.m. When Fowler opened his car door, he heard a voice at the Camerons' house saying distinctly, clearly, and loudly, "Thell Fowler, you son of a bitch, we're going to get even with you, we're going to . . . fuck you in the ass, you son of a bitch . . . for what you did to us." Hammers heard the voice say, "Thell Fowler, you are a fucking whore, I'm going to get a piece of your ass" and repeatedly yell that he was going to "beat the shit out of" Fowler or words to that effect. Fowler recognized the voice as Cameron's and could tell he had been drinking from the way he was speaking. Fowler did not notice whether the Camerons' gate was latched.

Fowler and Hammers took Cameron's statements as a threat to Fowler. Fowler felt intimidated and, in light of the shooting and Robert Cameron's trial, believed Cameron might harm him that night. Shortly before 10 p.m., Fowler called 911 to report the threat and then waited outside his house for 15 or 20 minutes until sheriff's deputies arrived. Cameron continued to yell until the deputies arrived but never left his property or took any physical action toward Fowler.

Deputy Sheriff Daniel Nunez found Cameron in front of his house drinking a beer, about 15 yards from the chained and locked gate. Nunez called Cameron to the gate and Cameron walked over. Nunez asked Cameron to come out and talk to him. Cameron said the keys to the gate were in the house and Nunez asked him to get them. Cameron walked to the house, brought the keys, unlocked the gate, and came out. Once Cameron

was outside the gate, Nunez noticed he was under the influence of alcohol. Cameron's eyes were red and his speech was slurred and Nunez smelled alcohol on his breath and person.<sup>2</sup> Cameron was able to maintain his balance, complete tasks, follow Nunez's directions, follow the conversation, and respond logically to questions. When Nunez announced why he was there, Cameron denied making any threats and claimed he had said "hell," not "Thell." Nunez arrested Cameron.

Fowler testified at Robert Cameron's trial.

## DISCUSSION

"Any person who willfully threatens to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement . . . is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his . . . own safety . . . shall be punished . . . ."

(§ 422.) Cameron contends there was insufficient evidence that his statements

"convey[ed] a gravity of purpose and an immediate prospect of execution of the threat" and caused Fowler "reasonably to be in sustained fear for his . . . own safety." (*Ibid.*)

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<sup>2</sup> Before he unlocked the gate and came out, Cameron had walked without teetering, losing his balance, or falling down. He had not struggled to unlock the gate.

We apply the substantial evidence standard of review. (*People v. Allen* (1995) 33 Cal.App.4th 1149, 1155.)

"Even an ambiguous statement may be a basis for a violation of section 422." (*People v. Butler* (2000) 85 Cal.App.4th 745, 753-754.) "[S]ection 422 does not require an unconditional threat of death or great bodily injury." (*People v. Bolin* (1998) 18 Cal.4th 297, 338.) Nor does it require communication of "a time or precise manner of execution. . . ." [Citation.]" (*People v. Butler, supra*, 85 Cal.App.4th at p. 752.) "[U]nequivocality, unconditionality, immediacy and specificity are not absolutely mandated, but must be sufficiently present in the threat and surrounding circumstances to convey gravity of purpose and immediate prospect of execution to the victim. The four qualities are simply the factors to be considered in determining whether a threat, considered together with its surrounding circumstances, conveys those impressions to the victim." (*People v. Stanfield* (1995) 32 Cal.App.4th 1152, 1157-1158.) "A victim must actually be in sustained fear, and the sustained fear must also be reasonable under the circumstances." (*In re Ricky T.* (2001) 87 Cal.App.4th 1132, 1140.) "'[S]ustained' . . . means a period of time that extends beyond what is momentary, fleeting, or transitory." (*People v. Allen, supra*, 33 Cal.App.4th at p. 1156.)

Here, Cameron's threats were unequivocal, unconditional, immediate and specific. They conveyed that he intended to inflict great bodily injury on Fowler in retaliation for Fowler's report of gunshots and the ensuing arrest and legal proceedings against Robert Cameron. The threats occurred just days before Fowler was set to testify at Robert Cameron's trial. Cameron was just across the street from Fowler, Fowler's property was

not completely fenced, and Fowler did not notice that Camerons' gate was locked. Both Fowler and Hammers took Cameron's statements as a threat to Fowler, who reasonably believed Cameron's words were more than a drunken rant and feared Cameron might harm him that night. The threats reasonably caused Fowler to be in sustained fear for his safety. In addition to the circumstances mentioned above, he was in a remote area and it was dark. The threats were repeated and Cameron continued yelling for more than an hour.

#### DISPOSITION

The judgment is affirmed.

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O'ROURKE, J.

WE CONCUR:

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McCONNELL, P. J.

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AARON, J.